

ADDITIONAL MATERIALS
RE: Item #18
March 9, 2007



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

March 7, 2007

Hon. Thomas B. Saviello
60 Applegate Lane
Wilton, Maine 04294

Dear Rep. Saviello:

This letter is in response to your request for guidance on whether you can vote on or otherwise influence legislation or a Department of Environmental Protection rule-making regarding the Regional Greenhouse Gas Initiative (RGGI). Your request was considered at the Ethics Commission's meeting on February 27, 2007.

Factual Background

The Commission considered the following factual background, based on information provided by you and other interested persons and the DEP website.

RGGI is a cooperative effort among northeastern and mid-Atlantic states to reduce emissions of carbon dioxide by electric power generators. If adopted by these states, the agreement would impose a cap on total carbon dioxide emissions for the region, and power plants that emitted carbon dioxide would likely be required to buy allowances on a market in order to emit carbon dioxide. The DEP has begun seeking public input on the RGGI rules.

If adopted in Maine, six power plants in the state likely would be required to buy the allowances. Two of the six power plants are owned by Verso Paper Holdings LLC, which owns paper mills in Jay and Bucksport, Maine. You are employed as the environmental manager of the Jay mill.

The paper mill in Jay has a power plant which creates steam used in paper production and which also produces electric power which is sold. As the environmental manager for the mill, you oversee compliance of the power plant with the state's environmental laws and rules. Verso Paper engages a consulting firm to oversee the power plant. That firm purchases allowances to emit a different chemical, sodium dioxide.

Because Maine's RGGI program is still under development, it is difficult to know what the costs of the allowances would be to Verso Paper, but for the purposes of this opinion you suggested it could be in the range of \$5 million for each plant. If the Jay plant were

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required to buy allowances, they would be purchased by Verso Paper's accounting department. If adopted in Maine, the RGGI program would not significantly affect your job responsibilities or the performance of your job. The purchases of the allowances would not affect your department's budget.

The Commission received comments from an environmental organization stating that one bill concerning RGGI may contain some financial incentives that would be paid by the state of Maine to Verso Paper.

Legal Standard for Legislative Conflict of Interest under Maine Law

During the course of the discussion, the Commission analyzed the potential conflict under Paragraphs 1(A), (E), and (F) of 1 M.R.S.A. §1014:

A. Where a Legislator or a member of his immediate family has or acquires a direct substantial personal financial interest, distinct from that of the general public, in an enterprise which would be financially benefited by proposed legislation, or derives a direct substantial personal financial benefit from close economic association with a person known by the Legislator to have a direct financial interest in an enterprise affected by proposed legislation.

E. Where a Legislator or a member of his immediate family accepts or engages in employment which could impair the Legislator's judgment, or where the Legislator knows that there is a substantial possibility that an opportunity for employment is being afforded him or a member of his immediate family with intent to influence his conduct in the performance of his official duties, or where the Legislator or a member of his immediate family stands to derive a personal private gain or loss from employment, because of legislative action, distinct from the gain or losses of other employees or the general community.

F. Where a Legislator or a member of his immediate family has an interest in legislation relating to a profession, trade, business or employment in which the Legislator or a member of his immediate family is engaged, where the benefit derived by the Legislator or a member of his immediate family is unique and distinct from that of the general public or persons engaged in similar professions, trades, businesses or employment.

Factors Considered by the Commission

In considering this matter, the Commission acknowledged certain negative results that would occur if you were to recuse yourself from the RGGI legislation and rule-making:

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- The Legislature's decision-making process is benefited when members bring specialized knowledge and experience to the debate. You have relevant professional and educational experience that bears on discussion of RGGI. If you recused yourself, you would not be available as a resource to your colleagues.
- Policy-making at the State House is benefited when Legislators and others present a range of views, which complement and sometimes even clash with each other. When a Legislator with a valuable professional background recuses himself, the recusal affects the balance of viewpoints considered.
- Your recusal would deny the constituents in House District #90 a representative voice when the Legislature reaches a policy decision on the RGGI rules. Unlike recusal situations in other public offices (e.g., the judiciary), when a Legislator recuses himself, he or she is not replaced by a substitute. So, the residents in your legislative district would essentially be unrepresented if you recused yourself from the RGGI legislation.

Nevertheless, Legislators should consider the appearance of a conflict of interest in addition to whether there is an actual conflict in order to maintain public confidence in government. This advice is included in the statement of purpose of the Legislative Ethics Law (1 M.R.S.A. §1011).

Advice of the Commission

At the February 27, 2007 meeting, the Commission voted 3-2 to advise you that it would not be a conflict of interest for you to participate in the legislative process regarding RGGI – including discussion of policy issues and providing factual information to your colleagues – but that the Commission would strongly urge you to consider whether you should recuse yourself from voting on each specific bill or resolve concerning RGGI that might affect Verso Paper.¹ This does not mean that the Commission is advising you not to vote on any RGGI legislation or resolve on proposed rules simply because it will affect your employer. Rather, the Commission reminds you that you are under an obligation under Sections 1014(1) and 1015(1) to consider, on a case-by-case basis, whether you should recuse yourself from each RGGI bill or resolve. The Commission is reluctant to conclude at this stage that voting on a proposed law or resolve concerning RGGI will be an actual or potential conflict of interest when you have not presented a specific bill or resolve for the Commission's consideration.

Sincerely,

Andrew Ketterer

Andrew Ketterer
Commission Chair

¹ Commission members Michael Friedman, Mavourneen Thompson and I voted to approve this advice, and members Jean Ginn Marvin and Vinton Cassidy voted against.



123rd MAINE LEGISLATURE

FIRST REGULAR SESSION-2007

Legislative Document

No. 1090

H.P. 808

House of Representatives, March 6, 2007

An Act To Authorize the State's Participation in the Regional Greenhouse Gas Initiative

Reference to the Committee on Natural Resources suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative KOFFMAN of Bar Harbor.
Cosponsored by Senator BARTLETT of Cumberland and
Representatives: BERRY of Bowdoinham, BLISS of South Portland, BRAUTIGAM of
Falmouth, CONOVER of Oakland, Speaker CUMMINGS of Portland, DUCHESNE of
Hudson, EATON of Sullivan, EBERLE of South Portland, HINCK of Portland, MARLEY of
Portland, MIRAMANT of Camden, PENDLETON of Scarborough, PINGREE of North
Haven, PIOTTI of Unity, SIMPSON of Auburn, TREAT of Farmingdale, WATSON of Bath,
Senators: BENOIT of Sagadahoc, DAMON of Hancock, DOW of Lincoln, President
EDMONDS of Cumberland, MARTIN of Aroostook, MILLS of Somerset, TURNER of
Cumberland.

1 Be it enacted by the People of the State of Maine as follows:

2 Sec. 1. 38 MRSA c. 3-A, as amended, is repealed.

3 Sec. 2. 38 MRSA c. 3-B is enacted to read:

4 CHAPTER 3-B

5 REGIONAL GREENHOUSE GAS INITIATIVE

6 §579-A. Regional greenhouse gas initiative

7 1. Definitions. As used in this chapter, unless the context otherwise indicates, the
8 following terms have the following meanings.

9 A. "Administrative costs" means costs of the commission and department that are
10 expended pursuant to and associated with the implementation of this section,
11 including, but not limited to, costs of program planning and evaluation, securing
12 necessary expertise, contract formation and administration and monitoring and
13 enforcing contractual obligations.

14 B. "Allowance" means an authorization to emit a fixed amount of carbon dioxide.

15 C. "Cap and trade program" means a policy approach for controlling emissions from
16 a group of emitting sources, such as electric generating facilities, by:

17 (1) Setting an overall cap or maximum amount of emissions from all regulated
18 sources per compliance period, rather than regulating each source individually;

19 (2) Creating and issuing a certain number of authorizations to emit in the form of
20 allowances and making them available to the marketplace through a sale by
21 auction;

22 (3) Limiting the total number of allowances made available in any compliance
23 period; and

24 (4) Requiring regulated sources to completely and accurately measure and report
25 all covered emissions and turn in an equal number of allowances as emissions at
26 the end of the compliance period.

27 D. "Carbon" means carbon dioxide emissions.

28 E. "Carbon cap" or "cap" means a cap on carbon.

29 F. "Commission" means the Public Utilities Commission.

30 G. "Covered facility" means any electric power generating unit that is subject to
31 regulation pursuant to the initiative memorandum.

32 H. "Electric power sector" means the 4 classes of consumers of electric power:
33 industrial; business and commercial; municipal and institutional; and residential and
34 low-income residential.

1 I. "Memorandum of Understanding" or "memorandum" means the Regional
2 Greenhouse Gas Initiative Memorandum of Understanding dated December 20, 2005
3 that establishes an electric power sector carbon emissions cap and trade program
4 within the northeast region of the United States.

5 J. "Regional Greenhouse Gas Initiative" or "initiative" means the initiative referred
6 to in the Memorandum of Understanding and the corresponding model rule.

7 K. "Service provider" means a public or private provider of energy efficiency,
8 conservation, demand-side or carbon reduction management services or an entity
9 selected by the commission to contract with such providers or otherwise arrange the
10 delivery of energy efficiency or carbon reduction programs.

11 **2. Cap and trade program.** There is established a cap and trade program.

12 A. By rule, the department, in consultation with the commission, shall establish a
13 carbon dioxide cap and trade program to limit and then reduce the total carbon
14 emissions released by electric generating stations that provide electric power to the
15 State's utilities and end-use consumers.

16 B. The department's rules establishing a carbon cap and trade program must be
17 designed to comply with the Regional Greenhouse Gas Initiative and permit the
18 holders of allowances to trade them in a regional market to be established through the
19 initiative.

20 **3. Annual carbon budgets and allocation of tradable carbon allowances.** The
21 department shall, by rule, establish annual budgets for total emissions of carbon
22 associated with the electric power sector in the State consistent with the initiative
23 memorandum.

24 A. In establishing annual carbon emission budgets, the department may not exceed
25 the State's maximum allotment of annual allowances pursuant to the initiative
26 memorandum, and shall reduce the budget if the total estimated annual estimated
27 emissions for the budget year is 250 or more tons below the state cap. Any such
28 reduction in the annual emission budget may be made contingent upon continued
29 idling or retirement of a covered facility during the budget year. The department may
30 make further reductions in the State's annual cap on a reciprocal basis with the other
31 states participating in the initiative.

32 B. The department shall retire allowances to account for voluntary renewable energy
33 sales within each control period within the State, consistent with the initiative model
34 rule.

35 C. The department shall annually convey 100% of allowances established pursuant
36 to this section into the Energy Efficiency and Carbon Reduction Trust Account
37 established pursuant to subsection 6.

38 **4. Auction design.** The following provisions apply to the auction of allowances.

39 A. Any tradable electric power sector carbon allowances established pursuant to this
40 section must be sold through a public auction process open to all who wish to
41 participate.

1 B. The commission, in consultation with the department, shall determine and specify
2 the method of auctioning allowances, including the design of the auction process, the
3 entity that may conduct and manage the auction and the timing of auctions in any
4 year. The auction process must be designed to mitigate the risk of market power and
5 advance the purposes of this section.

6 C. The commission, in consultation with the department, shall engage an
7 independent contractor, consumer trustee or other entity experienced in auction
8 design and management or contract with a consumer trustee or other entity
9 determined by the commission to be qualified to conduct auctions in a manner that
10 ensures the efficiency of the auction process. The determination of an independent
11 contractor, consumer trustee or other entity must include an open and public request
12 for proposals from parties seeking to conduct the auctions. Any person or entity
13 selected by the commission to conduct the auctions may be reimbursed only for
14 reasonable costs of administering the program, as determined by the commission.
15 The independent contractor, consumer trustee or other entity is authorized to receive,
16 hold and sell allowances for the long-term benefits of consumers.

17 D. All proceeds from the sale of allowances, minus the administrative costs of the
18 auction, must be deposited into the trust account.

19 E. The commission shall require an annual report describing the auction and its
20 results from the independent contractor, consumer trustee or other entity describing
21 the auction and its results. The report must be made available to the public and be
22 submitted to the joint standing committees of the Legislature having jurisdiction over
23 natural resources matters and utilities and energy matters.

24 5. **Energy Efficiency and Carbon Reduction Trust Account.** The commission
25 shall establish a trust account pursuant to this subsection.

26 A. The commission shall establish the Energy Efficiency and Carbon Reduction
27 Trust Account, referred to as "the trust account" in this section, to receive, hold, bank
28 and sell tradable allowances and any revenue received from the sale of those
29 allowances.

30 B. All allowances and funds in the trust account may be used only for energy
31 efficiency and programs that reduce the State's emissions of carbon dioxide and other
32 greenhouse gases, except that:

33 (1) Up to 5% of total funds may be used for costs of administration of this
34 section; and

35 (2) Up to 2% of total funds may be used for the administrative costs of the
36 advisory board established in subsection 7, paragraph C.

37 The commission may establish separate subaccounts for each of these purposes.

38 C. Any interest earned on funds in the trust account must be credited to the trust
39 account. Funds not spent in any fiscal year remain in the trust account to be used for
40 future energy efficiency and carbon reduction programs.

41 D. All funds collected pursuant to this section, whether held by the commission or
42 the auctioneer or their agents, may be used only for the purposes of benefiting electric

1 power consumers, reducing energy consumption and lowering the State's greenhouse
2 gas emission profile.

3 E. In the event funds are not expended or contracted for expenditure within 4 years
4 of being deposited, the commission shall return the value of those funds to electric
5 power consumers in a manner consistent with the costs of the program paid by each
6 electric power sector for the year the funds were collected.

7 6. Energy efficiency and carbon reduction program. The commission shall
8 periodically develop and implement an energy efficiency and carbon reduction program
9 pursuant to this subsection.

10 A. In order to provide the maximum long-term benefit to the State's energy
11 consumers and to achieve the greatest possible reductions in emissions of carbon and
12 other gases that contribute to global warming, the commission, in consultation with
13 the department, shall periodically develop and, to the extent of available funds,
14 implement a statewide energy efficiency and carbon reduction program. To the
15 maximum extent practicable, the program must:

16 (1) Reduce the State's emissions of greenhouse gases consistent with the
17 reduction goals of this chapter;

18 (2) Benefit the State's energy consumers;

19 (3) Build upon existing regulatory and administrative structures and programs
20 that lower energy costs, improve energy efficiency or lower the State's carbon
21 emissions profile;

22 (4) Provide support for new emissions-reducing activities or projects that would
23 not occur under existing programs or investments;

24 (5) Support programs and activities that do not pose a significant risk to human
25 health and the environment;

26 (6) Fairly balance and distribute proceeds from the public sale of allowances in
27 accord with the purposes of this section; and

28 (7) Foster development and deployment of clean energy technologies and carbon
29 abatement technologies that have significant carbon reduction potential.

30 B. To the extent practicable, the energy efficiency and carbon reduction program
31 must be coordinated and integrated with other energy-related programs of the State.

32 C. To carry out its responsibilities pursuant to this section, the commission shall
33 present an annual program plan to an advisory board composed of persons with
34 relevant expertise and experience, including persons representing consumers in each
35 electric power sector, environmental interest groups, public health groups, the Office
36 of the Public Advocate, the University of Maine or other state academic institution,
37 the department and the Energy Resources Council. Electrical generators, energy
38 suppliers and utilities may be provided with one or more ex officio, nonvoting seats
39 on the board. The commission may contract with appropriate entities with relevant
40 expertise and experience to assist the board. The commission may merge the duties
41 of the advisory board with other activities of the commission.

1 D. The commission shall hold at least one public hearing and invite, accept, review
2 and consider comments and suggestions from interested parties prior to adopting or
3 substantially revising the energy efficiency and carbon reduction program.

4 7. Implementation. The initiative must be implemented in accordance with the
5 following provisions.

6 A. In recognition of the superior cost and greenhouse gas reduction benefits resulting
7 from accelerated and sustained investments in cost-effective energy efficiency,
8 energy conservation and low-cost, low-carbon electric power system investments, the
9 commission shall place a high priority upon delivery of cost-effective energy
10 efficiency, conservation and demand-side management programs. To the extent
11 funds are expended on this priority, the commission shall, to the extent practicable,
12 balance and distribute proceeds from the public sale of allowances in approximate
13 proportion to the cumulative program costs paid by each electric power sector, with
14 costs to be averaged over a period of 3 or more years.

15 B. The commission shall provide for competitive solicitations of targeted energy
16 efficiency and greenhouse gas emissions reduction delivery programs as part of its
17 overall development of programs under this chapter. The commission may arrange
18 the delivery of energy efficiency and emission reduction programs by contracting
19 with service providers. The commission shall select service providers in accordance
20 with this paragraph.

21 (1) The commission shall select service providers through a competitive bidding
22 process, except that:

23 (a) The commission may select a service provider for one or more programs
24 without employing a competitive bidding process if the commission finds
25 that the selection of the service provider will promote the efficient and
26 effective delivery of programs and is consistent with the objectives of this
27 chapter; and

28 (b) For the delivery of energy efficiency and conservation programs to low-
29 income and residential consumers, the commission, without employing a
30 competitive bidding process, may use the delivery system for the
31 Weatherization Assistance for Low-income Persons Program administered
32 through the United States Department of Energy and the network of for-profit
33 and not-for-profit entities who have held contracts with transmission and
34 distribution utilities to deliver conservation services to low-income and
35 residential customers.

36 (2) To the extent practicable, the commission shall encourage the development
37 of resources, infrastructure and skills within the State by giving preference to in-
38 state service providers.

39 C. Notwithstanding Title 5, section 1831, the commission is not subject to rules
40 adopted by the State Purchasing Agent in selecting service providers pursuant to this
41 subsection. The commission shall adopt rules establishing procedures governing the
42 selection of service providers under this subsection. The commission shall consult
43 with the State Purchasing Agent in developing the rules.

1 **8. Effect on other responsibilities.** The responsibilities created by this section are
2 in addition to all other responsibilities imposed by any other law or rule and may not
3 diminish or reduce any power or authority of the commission or department including the
4 authority to adopt standards and rules necessary for the State to join and fully participate
5 in any multistate program, at any stage in the development and implementation of such a
6 program, intended to control emissions of carbon dioxide or other substances that are
7 determined by the department to be damaging or altering the climate.

8 **9. Rules.** The commission and department shall each adopt rules necessary to
9 implement this section. Rules adopted under this subsection are routine technical rules as
10 defined in Title 5, chapter 375, subchapter 2-A.

11 **10. Report.** The commission and department shall report by January 1st of each
12 year to the joint standing committees of the Legislature having jurisdiction over natural
13 resources matters and utilities and energy matters. The report must include a description
14 of the implementation and operation of the initiative, the revenues collected and the
15 expenditures made under this section, the statewide energy efficiency and carbon
16 reduction programs and any recommendations for changes to law relating to the State's
17 energy conservation or carbon reduction efforts.

18 **Sec. 3. Findings.** The Legislature finds that:

19 1. There is a growing scientific consensus that the increased anthropogenic emissions
20 of greenhouse gases are enhancing the natural greenhouse effect, resulting in changes in
21 the earth's climate, and that these changes in climate pose serious risks to human health
22 and terrestrial and aquatic ecosystems globally, regionally and in the State;

23 2. A carbon constraint on fossil fuel-fired electricity generation and the development
24 of a carbon emissions cap and trade program will create a strong incentive for the
25 creation and deployment of more efficient fuel-burning technologies, renewable resources
26 and end-use efficiency resources and will lead to lower carbon emissions and lower
27 dependence on imported fossil fuels;

28 3. Absent federal action, some states are taking actions to work regionally to reduce
29 electric power sector carbon emissions;

30 4. The State has joined with these other states to design the Regional Greenhouse
31 Gas Initiative, and, in 2005, the Governor signed a memorandum of understanding
32 signaling the State's intention to participate in the initiative;

33 5. The State's participation in the initiative is a crucial and necessary step to meet the
34 greenhouse gas emission reduction goals set forth in this Act;

35 6. It is crucial to maximize the State's contribution to lowering carbon emissions
36 while minimizing impacts on electric system reliability and unnecessary costs to the
37 State's electric power and energy consumers;

38 7. The accelerated deployment of low-cost energy efficiency technologies and the
39 strategic use of low-carbon and zero-carbon generation are the best means to achieve
40 these goals; and

- 1 8. It is crucial that funds made available from operation of a regional carbon cap and
2 trade program be devoted to the benefit of the State's energy consumers through
3 investments in a strategic portfolio of energy efficiency and low-carbon energy resources.

4 **SUMMARY**

- 5 This bill authorizes the State's participation in the Regional Greenhouse Gas
6 Initiative. It establishes a carbon dioxide cap and trade program and establishes annual
7 budgets for emissions of carbon associated with the electric power sector in the State.